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10/814,565

03/31/2004

Arlo H. T. Lin

CFP-1842-1 (15722/471)

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EXAMINER

BASICHAS, ALFRED

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/814,565
Filing Date: March 31, 2004
Appellant(s): LIN, ARLO H. T.

Alan D. Kamrath
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal briefs filed August 2, October 31, and December 17, 2007, appealing from the Office action mailed November 29, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief of October 31 is correct.

(8) Evidence Relied Upon

3,816,057	SEMENKO	6-1974
6,527,542	CHEN	3-2003
JP11051391	KURIYAMA	2-1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 2 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuriyama (JP11051391) in view of Semenko (3,816,057). Kuriyama discloses substantially all of the claimed limitations including, among other things, a cigarette lighter 1 including, among other things, a reservoir for storing fuel 17, a head 6 formed on the reservoir, a valve 7a for releasing the fuel from the reservoir, a nozzle 7b put in the head for spraying the fuel from the valve, an ignition device 8 for igniting the fuel sprayed from the nozzle, a cover 4 for covering the head and a visual alarm 23 for providing only one round of a visual message every time the cover is lifted, a collar 6, wherein the alarm includes a switch 30 for contact with the cover when the cover is lifted (see at least fig. 5), further including a lever 15a for controlling the valve, a container 3 integrated with the reservoir, wherein the ignition device is put in the container (see at least fig. 1) and includes an electrode 11 extending to the vicinity of the nozzle (see at least fig. 3). Kuriyama does not specifically recite the message as audible or the claimed duration (i.e. one round).

Semenko discloses, among other things, a cigarette lighter having a cover 36 and “if desired” an audible message every time the cover is lifted, with the alarm including a speaker 34. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the audible message of Semenko into the invention disclosed by Kuriyama, so as to provide for the desired effect.

As regards having only one round of the audible message, it is a matter of design choice based on esthetic appeal. The particular message and duration is simply a matter of personal preference. In view of the absence of criticality for this particular design, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate it into the invention disclosed by Kuriyama in view of Semenko, so as to provide for the desired esthetics.

2. Claims 3-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuriyama (JP11051391)) in view of Semenko (3,816,057), and further in view of Chen (6,527,542). Kuriyama discloses substantially all of the claimed limitations but does not specifically recite the claimed hinge arrangement including ears and the positioning of the switch between the ears.

Chen teaches a cigarette lighter including a cover 20, head 58, and collar 5 including a hinge arrangement that utilizes ears (see at least fig. 2). Chen does not specifically discuss the ears as they are clearly old and well known in the art. Furthermore, this arrangement has no specific criticality other than mere design choice

based on esthetic appeal. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the ear arrangement taught by Chen on the collar and/or the cover of Kuriyama in view of Semenko, so as to provide for the desired esthetic appeal.

As regards the placement of the switch between the ears, this is simply an extension of the desired appearance. As disclosed by Kuriyama, the placement of the switch is best located at the hinge holding the cover. Accordingly, the placement of the switch in an arrangement that utilizes ears would naturally extend to require that the placement thereof be therebetween. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to place the switch between the ears, so as to provide for the desired esthetic appeal.

(10) Response to Argument

Appellant asserts that the rejection of the claims as obvious based on design choice is not proper, as a repeating message is annoying and therefore apparently unobvious. Still, the basis of annoying is a subjective one that is based on personal preference. While there is no question that some people may be annoyed by a continually recurring alarm, commercial, jingle, tune, or statement against smoking, others and likely the consumers of the type of products reflected in the current invention would find them catchy or cute. While there is no accounting for taste, it still remains a matter of taste and thereby personal preference.

Appellant further asserts that the examiner is improperly utilizing hindsight and lacks motivation for the modification. First it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Further, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). As shown above, the type and duration of the message is based personal preference and therefore driven by consumer demand. If a product provides an annoying message, consumer demand will be low and one of ordinary skill in the art would be motivated to change it to try different variations. Such knowledge is well within the level of ordinary skill.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Alfred Basichas/
Primary Examiner, Art Unit 3749

Conferees:

/Steven B. McAllister/
Supervisory Patent Examiner, Art Unit 3749

/Janet C. Baxter/
TC 3700 TQAS